



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Scott Clark, et al.

Serial No.: 09/759,103

Group Art Unit: 3688

Filed: January 12, 2001

Examiner: Daniel Lastra

For: Search Engine Providing an Option to  
Win the Item Sought

Atty. Doc. No.: 632-001

Mail Stop Appeal Brief – Patents  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDED APPEAL BRIEF UNDER 37 CFR §41.37(d)**

S I R:

In response to the February 17, 2010 Notification of Non-Compliant Appeal Brief, Applicants respectfully submit this Amended Appeal Brief under 37 CFR §41.37(d) in the above referenced matter. This Amended Appeal Brief replaces the original Appeal Brief filed December 30, 3009. In the interest of brevity, Applicants have omitted redundant copies of Exhibits 1-9 filed with the original Appeal Brief, and respectfully request that the originally filed Exhibits 1-9 be retained with this Amended Appeal Brief.

## **TABLE OF CONTENTS**

<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
I. Table of Authorities	4
II. Real Party in Interest	6
III. Related Appeals and Interferences	6
IV. Status of Claims	7
V. Status of Amendments	7
VI. Summary of Claimed Subject Matter	8
VII. Grounds of Rejection to be Reviewed on Appeal	30
A. Whether Claims 1-2, 6-11, 13-16, 18-26, 27-28 and 31-37 are unpatentable under 35 U.S.C. §103 over Walker ‘888 in view of bottomdollar.com and Walker ‘765	30
B. Whether Claims 3-5 and 29-30 are unpatentable under 35 U.S.C. §103 over Walker ‘888 in view of bottomdollar.com, Walker ‘765 and Yoseloff	31
C. Whether Claims 1, 10, 15, 21-22, 33 and 35-37 are unpatentable under 35 U.S.C. §112, 2nd paragraph	31
VIII. Argument	32
A. Claims 1-2, 6-11, 13-16, 18-26, 27-28 and 31-37 are patentable over the combination of the prior art because the combination of references fail to teach every element of the claim	32
B. Claims 3-5 and 29-30 are patentable over the combination of the prior art because the combination of references fail to teach every	

element of the claim	39
C. Claims 1, 10, 15, 21-22, 33 and 35-37 are patentable under 35 U.S.C. § 112, second paragraph because the claims particularly point out and distinctly claim the invention	45
IX. Conclusion	48
Appendix I: Claims	49
Appendix II: Evidence	67
Appendix III: Related Proceedings	68

## **I. TABLE OF AUTHORITIES**

### **A. CASES CITED**

1. *Graham v. John Deere Co.*, 383 U.S. 1 (1966);
2. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007);
3. *In re Ehrreich*, 590 F.2d 902 (Fed. Cir.1979);
4. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989);
5. *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005);
6. *In re Morris*, 127 F.3d 1048 (Fed. Cir. 1997)

### **B. UNITED STATES STATUTES CITED**

1. 35 United States Code §103;
2. 35 United States Code §112, Second Paragraph

### **C. PATENTS, PUBLICATIONS, AND NON-PATENT LITERATURE CITED**

1. United States Patent Application Pub. No. 2003/0054888, to Walker, *et al.*;
2. United States Patent No. 6,364,765, to Walker, *et al.*;
3. United States Patent No. 6,331,143, to Yoseloff, *et al.*;
4. Bottomdollar.com, <http://www.web.archive.org/web/19991013040730/http://bottomdollar.com/index.html> (Oct. 13, 1999).

**D. SECONDARY SOURCES CITED**

1. File Wrapper for United States Patent Application Serial Number 09/759,013 for “Search Engine Providing an Option to Win the Item Sought” (subject of current appeal);
2. Manual of Patent Examining Procedure (MPEP) §§ 2131-2173.02.

## **II. REAL PARTY IN INTEREST**

The real party in interest in this appeal is PickaPin.com of Bronx, NY. Scott Clark of New York, New York, Armen Djourian, of New York, New York and Moujan Vahdat of New York, New York are the inventors and have assigned an interest to PickaPin.com in the invention that is currently subject to appeal. The assignment to PickaPin.com is recorded with the United States Patent and Trademark Office at Reel/Frame 019348/0373.

## **III. RELATED APPEALS AND INTERFERENCES**

On September 26, 2005, in response to an Office Action dated June 27, 2005 finally rejecting all of the then-pending claims, Applicants filed a Notice of Appeal and a Request for a Pre-Appeal Brief conference. On December 13, 2005, a Notice of Panel Decision from Pre-Appeal Brief Review maintained the rejection of claims 1-30. On February 27, 2006, Applicants filed a Request for Continued Examination (“RCE”) and Amendment. The Office Action dated June 27, 2005, Applicants’ Pre-Appeal Brief Request for Review, the Notice of Panel Decision from Pre-Appeal Brief Review are appended in Appendix III.

On September 21, 2007, in response to an Office Action dated May 21, 2007 finally rejecting all of the pending claims, Applicants filed a Notice of Appeal and, on March 4, 2008, filed an amended Appeal Brief. On May 8, 2008, Applicants withdrew the Application from Appeal and reopened prosecution by filing a Request for Continued Examination (“RCE”) and Amendment. The Office Action dated May 21, 2007, the Request for Continued Examination dated May 8, 2008, and Appeal Brief dated March 4, 2008 are appended in Appendix III.

On October 22, 2009, in response to an Office Action dated April 22, 2009 finally rejecting all of the then-pending claims, Applicants filed a Notice of Appeal. Applicants are

unaware of any other prior appeal, pending appeal, judicial proceeding, or interference proceeding which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this proceeding. The Office Action dated April 22, 2009, Amendment and Response to Non-Final Office Action dated February 5, 2009, and Non-Final Office Action dated August 5, 2008 are attached in Appendix II.

#### **IV. STATUS OF CLAIMS**

Claims 1, 10, 15, 21-22, 33 and 35-36 were last amended in a Response and Amendment dated February 5, 2009. In addition, Claim 37 was added in the Response and Amendment dated February 5, 2009. Claims 1-11, 13-16 and 18-37 are pending in the application and stand finally rejected under 35 U.S.C. §103 by the Examiner in the Office Action dated April 22, 2009, and are the appealed claims. Claims 12 and 17 have been cancelled.

The Amendment dated February 5, 2009 and Final Rejection dated April 22, 2009 are attached in Appendix II.

#### **V. STATUS OF AMENDMENTS**

No Amendment has been filed subsequent to the Final Office Action dated April 22, 2009. The Applicants consider the claims listed in Appendix I to be the claims at issue in this appeal.

## **VI. SUMMARY OF CLAIMED SUBJECT MATTER**

There are nine independent claims in the present application — Claim 1, Claim 10, Claim 15, Claims 21-22, Claim 33 and Claims 35- 37. A copy of the claims can be found in Appendix I.

Generally, the claims relate to a system and method for permitting a service provider to provide a shopping interface where a user may play a game of chance to win an item of the user's choice. (See, e.g., the '013 application, page 2, l. 1-page 2, l. 8, page 6, ll. 8-18, Fig 2a) In the claims at issue, the game of chance may have odds of winning that are dynamically calculated and based on, for example, the cost of the product sought, a prize budget or a user's behavior during a browsing session. (See, e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig 2b).

Claim 1 recites a method for receiving a search request from a user, and providing that user with a game of chance to win the searched item (See, e.g., the '013 application, page 6, ll. 8-18, Fig 2a, element 208), with the odds of winning the prize dynamically being calculated from the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during the user's session. (See, e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig 2b).

Claims 10, 15, 21-22, 33 and 35-37 generally recite the same limitations as Claim 1. Claim 10 further includes the limitation of redirecting the user to a site where the user may purchase the item directly if they choose to not to play the game. (e.g., the '013 application, page 6, ll. 8-18, page 13, ll. 3-7, Fig 2a, element 209). Claim 15 includes the limitation where the system purchases the item on behalf of the user if the user chooses to play the game and



wins. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig 2b, element 218). Claims 21 and 22 include limitations where the system displays an outcome of the game where the apparent chance of winning the game is different than the calculated odds of winning the game. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, page 14, l. 13-page 15, l. 3, page 18, l. 22-page 19, l. 5, Fig 2b, elements 215, 217). Claim 33 recites, in addition to those limitations included in Claim 1, the limitation of presenting search results to a user, the search results having a link to a third party site and a link to a game to win the item searched. (e.g., the '013 application, page 6, ll. 8-18, page 10, ll. 13-31, Fig 2a, elements 208, 209). Claim 35 recites, in addition to those limitations recited in Claim 1, the limitation of providing a search results page having at least one link for the product information, a corresponding price, a link to the independent third party website, and a link to win the product searched. (e.g., the '013 application, page 6, ll. 8-18, page 10, ll. 13-31, page 13, ll. 3-7, Fig 2a, elements 208, 209, 210).

Claim 36 is an apparatus claim reciting a website having a search page for searching a product, (e.g., the '013 application, page 6, ll. 8-18, Fig 2a, elements 204, 205) a results page showing the results of the search and linking to a play page (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 20, Fig 2a, element 207), a play page permitting the user to play a game of chance to win the searched item, (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 20, Fig 2a, element 214) and a product win page that is displayed if the user wins the game of chance. (e.g., the '013 application, page 6, ll. 8-18, page 14, l. 13-page 15, l. 3, Fig 9)

Claim 37 generally recites the limitations of Claim 1, adding the limitation that the system purchases the item on behalf of the user if the user chooses to play the game and wins. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig 2b, element 218)

Claim 1 provides for a method for providing a game of chance related to a user's acquisition of a selected product. In particular, Claim 1 recites:

1. A method of providing a user with a game of chance, the method comprising the steps of:
  - receiving electronic signals from a user system representing search parameters  
descriptive of a product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 203 and 205)
  - retrieving at least one product information from at least one database storing third-party retail vendor product information; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)
  - transmitting electronic signals to the user system representing the retrieved product information and associated prices; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 207)
  - automatically providing the user with an option to play a game to win a selected product (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 208) from said product information without the user first making any payment or requesting the option; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Figs. 2a and 2b, element 210)
  - electronically calculating a dynamic probability of winning the selected product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds

received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

electronically and randomly generating a trial outcome of an event trial, the probability of the event trial generating a winning trial outcome corresponding to the calculated probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, elements 214 and 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution (e.g., the '013 application, page 6, l. 19-page 7, l. 6) and the trial outcome has a distribution associated with a second statistical distribution (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5) and

displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and

in response to a winning trial outcome, purchasing the selected product for the user from the third-party retail vendor. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

Claim 3 provides a method step for providing the results of the pseudo-random outcome of a game of chance to a user by displaying a user-chosen number with a comparison number.

Claim 3 particularly recites:

3. The method of claim 1, wherein the pseudo-random outcome is indicated by displaying a user-chosen number and a comparison number, (e.g., the '013 application, page 2, l. 21-page 3, l. 2, page 13, l. 8-page 15, l. 3), such that a winning outcome is indicated by displaying a comparison number that matches the user-chosen number, and a losing outcome is indicated by displaying a comparison number that does not match the user-chosen number. (e.g., the '013 application, page 2, l. 23-page 3, l. 2; page 14, l. 13-page 15, l. 3).

Claim 6 provides a method step permitting a user to increase their odds of winning a game of chance, and recites:

6. The method of claim 1, comprising providing the user with an opportunity to increase the chances of winning by performing a task for which a third party provides compensation to the provider of the game of chance. (e.g., the '013 application, page 19, ll. 6-13).

Claim 10 provides for an alternative embodiment of the present invention where a user is given the option of purchasing the desired product outright, or winning the product through a game of chance. Claim 10 recites:

10. A method of providing a user with a game of chance, the method comprising:

receiving electronic signals from a user system representing at least one search parameter descriptive of a product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2b, element 215)

retrieving at least one product information from at least one database storing third-party retail vendor product information; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)

transmitting electronic signals to the user system representing at a least one product, a price of the product and the independent third-party retail vendor of the product; (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 2, Fig. 2a, element 207)

automatically transmitting electronic signals representing at least a first option for the user to play a game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 208), to win the product without the user first making any payment or requesting the first option, and a second option to purchase the product; (e.g., the '013 application, page 4, ll. 7-13, page 6, ll. 8-18, Fig. 2a, element 209)

if the user chooses to play the game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 210):

electronically calculating a dynamic probability of winning the product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214 and 215)

generating an outcome indicator (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome, (e.g., the '013 application page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5)

displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and

in response to a winning trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 216) purchasing the product for the user from the independent third-party retail vendor at no cost to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218) and

if the user chooses to purchase the product instead of playing the game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 209): directing the user to a web site which sells the product. (e.g., the '013 application, page 13, ll. 3-7).

Claim 15 provides for an alternative embodiment of the present invention where a response to a user's inquiry regarding a product is predicated on a user provided search parameter. Claim 15 recites:

15. A method of providing a user with a game of chance, the method comprising:
  - receiving electronic signals from a user system representing at least one search parameter descriptive of a product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 203 and 205)
  - retrieving at least one product information from at least one database storing independent third-party retail vendor product information; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)
  - transmitting electronic signals to the user system representing a plurality of different independent third-party retail vendors and associated prices charged by each of said different independent third-party retail vendors for products identified in response to said at least one search parameter; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)
  - automatically transmitting electronic signals to the user system representing an option to play a game to win a selected one of said products without the user first making any payment or requesting the option; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a and 2b, element 210) and

if the user chooses to play the game: (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 209)

electronically calculating a dynamic probability of winning said selected one product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Figs. 2a and 2b, element 210)

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214 and 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome, (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6) and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b,



element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5) and displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and in response to a winning trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 216) purchasing said selected one product from a corresponding independent third-party retail vendor for the user at no cost to the user. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

Claim 21 provides for an alternative search result embodiment. Claim 21 recites:

21. A method of providing a user with a game of chance, the method comprising:
- receiving electronic signals from a user system representing at least one search parameter descriptive of a product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 203 and 205)
  - searching for products matching said at least one search parameter; (e.g., the '013 application, page 6, ll. 8-18, page 8, ll. 1-5, Fig. 2a, element 206)
  - transmitting electronic signals to the user system representing a plurality of independent third-party retail vendors and associated prices charged by each of said independent third-party retail vendors for products identified in response to said at least one search parameter, each of the products identified being offered for sale on a corresponding web site of each independent third-party retail vendor; (e.g.,

the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 2, Fig. 2a, element 207)

automatically transmitting electronic signals to the user representing an option to play a game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 208), to win a selected one of said products without the user first making any payment or requesting the option; (e.g., the '013 application, page 4, ll. 7-13, page 6, ll. 8-18, Fig. 2a, element 209) and

if the user chooses to play the game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 210):

electronically calculating a dynamic probability of winning said selected one product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, elements 214 and 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome, (e.g., the '013 application, page 14, l.

13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5) and displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and in response to a winning trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 216) purchasing said selected one product from a corresponding independent third-party retail vendor for the user at no cost to the user. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

Claim 22 provides for an alternative embodiment of the present invention with another method for allowing a user to play a game of chance to win a desired product. Claim 22 recites:

22. A method for providing a user an opportunity to win a product or service by playing a game of chance without buying the product or service and without paying a fee to play, comprising the steps of:

enabling the user to submit a search query associated with a type of product or service;  
(e.g., the '013 application, page 6, ll. 8-18, page 7, ll. 12-22, Fig. 2a, element 204)

conducting a search in a database for an independent third-party retail vendor product or service that satisfies the search query; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)

automatically presenting a result of the search to the user, including at least one product or service offered for sale by the independent third-party retail vendor retrieved from the database, along with an option to play the game; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 207)

enabling the user to select the product or service that he wants to win; (e.g., the '013 application, page 6, ll. 8-18, page 7, ll. 7-11, Fig. 2a, element 208)

dynamically determining the user's chance of winning the selected product or service based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

generating a trial outcome for each play of the game wherein the probability of the trial outcome generating a winning trial outcome corresponds to the user's chance of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the

trial outcome (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6) and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5) and displaying the outcome indicator to the user. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217).

Claim 30 provides an embodiment of the present principles where the probability of winning a product or service is increased in response to a user participating in a particular sponsored survey. Claim 30 specifically recites:

30. The method for providing a user an opportunity to win a product or service of claim 29 wherein the user can increase the probability of winning the product or service by participating in an online survey for an advertising sponsor. (e.g., the '013 application, page 19, ll. 6-13).

Claim 33 provides for an alternative embodiment of the present invention wherein the invention is directed to generating traffic through a website. Claim 33 recites:

33. A method for increasing user traffic to a search engine website, comprising:

receiving a search query from a user system interacting with a search webpage of the website, the search query defining a desired product for the user; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 204 and 205), and transmitting a results webpage to the user system, the results page including at least one link for redirection to a third party vendor website where the user system can interact with at least one webpage to purchase a corresponding product, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 209), and further including in the same webpage a play link corresponding to said third party vendor link for redirection to a webpage which allows the user to play a game of chance to win the product corresponding to the third party website redirection link; (e.g., the '013 application, page 6, ll. 8-18, page 10, ll. 13-31, Fig. 2a, element 209).

electronically calculating a dynamic probability of winning the corresponding product by the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

electronically and randomly generating a trial outcome of an event trial, the probability of the event trial generating a winning trial outcome corresponding to a determined probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, elements 214 and 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome, (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further

wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5), and displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and in response to a winning trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 216), purchasing the selected product from the user from the independent third-party retail vendor for the user at no cost to the user. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

Claim 35 provides for an embodiment of the present invention reciting an alternative method for generating traffic through a website. Claim 35 recites:

35. A method for increasing user traffic to a search website, comprising:

providing a search webpage containing a search interface for a user to submit a search query for a product; (e.g., the '013 application, page 6, ll. 8-18, page 10, l. 13-page 11, l. 3, Fig. 2a, elements 204 and 205)  
receiving a search query from a user employing said search webpage; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 204)  
searching independent third party websites by reference to said query; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)

retrieving product information and corresponding price from the third party websites for at least one products satisfying said query; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 206)

providing a game of chance in response to a user selection of the link to win the product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 208)

purchasing the product from the independent third party for the user response to a favorable outcome in said game; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218)

transmitting at least one results webpage to the user, the results webpage including at least one link for the product information, a corresponding price, a link to the independent third party website, (e.g., the '013 application, page 13, ll. 3-7) and a link to win the product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 210)

providing a game of chance in response to a user selection of the link to win the product, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 208 and 210), wherein the probability of winning the product by the user is dynamically calculated based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the



trial outcome, (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and purchasing the product from the independent third party for the user in response to a favorable outcome in said game. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

Claim 36 provides for an alternative embodiment of the present invention having a product search website apparatus that permits a user to play a game of chance to win a desired product. Claim 36 recites:

36. A product search website executing on a server storing a plurality of web pages, the website comprising:

a search page for a user submitting a query to the server for at least one product; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 204 and 205)

a results webpage transmitted to the user, the results page including links to an independent third party website and a link to a play webpage of the website; (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 20, Fig. 2a, element 207)

a play webpage providing a game of chance for winning the at least one product corresponding to a selected play link from the results webpage, (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 20, Fig. 2a, element 214), wherein a probability of winning the at least one product by the user is dynamically calculated based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214); and

a product win webpage to display an outcome indicator indicating a favorable outcome in said game of chance for the at least one product, (e.g., the '013 application, page 6, ll. 8-18, page 14, l. 13-page 15, l. 3, Fig. 9), wherein the outcome indicator is generated independently of the probability of winning, (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a favorable outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and the probability of winning has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig.

2b, element 215), and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution. (e.g., the '013 application, page 6, l. 19-page 7, l. 6)

Claim 37 provides for an alternative embodiment of the invention with another method for automatically providing to a user a game of chance to win a desired product. Claim 37 recites:

37. A computer-implemented method, comprising the steps of:

receiving a search request for a product, wherein the search request is transmitted from a communication device associated with or used by a user; (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, elements 203 and 205)

processing the search request with a processing device; (e.g., the '013 application, page 6, ll. 8-18)

generating a message, wherein the message contains information regarding at least one product offered by a retail vendor, product information regarding the at least one product, and at least one price associated with the at least one product; (e.g., the '013 application, page 6, ll. 8-18, page 12, l. 18-page 13, l. 2, Fig. 2a, element 207)

transmitting the message to the communication device; (e.g., the '013 application, page 6, ll. 8-18)

automatically providing the user with an option to play a game, (e.g., the '013 application, page 6, ll. 8-18, Fig. 2a, element 208), to win a selected product from the product information regarding the at least one product without the user first

making any payment or requesting the option; (e.g., the '013 application, page 4, ll. 7-13, page 6, ll. 8-18, Fig. 2a, element 209)

electronically calculating a dynamic probability of winning the selected product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 214)

electronically and randomly generating a trial outcome for a game of chance, wherein the probability of the game of chance generating a winning trial outcome corresponds to the calculated probability of winning; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, elements 214 and 215)

generating an outcome indicator, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217), wherein the outcome indicator is generated independently of the trial outcome, (e.g., the '013 application, page 14, l. 13-page 15, l. 3), and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6), and the trial outcome has a distribution associated with a second statistical distribution, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 215), and further wherein the first statistical distribution has a

distribution which is different from the second statistical distribution; (e.g., the '013 application, page 18, l. 22-page 19, l. 5) and displaying the outcome indicator to the user; (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 217) and in response to a winning trial outcome, (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 216), purchasing the selected product for the user from the independent third-party retail vendor at no cost to the user. (e.g., the '013 application, page 6, l. 19-page 7, l. 6, Fig. 2b, element 218).

## **VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The following summaries are derived from the Examiner's Final Office Action dated April 22, 2009 and Non-Final Office Action dated August 5, 2008, both of which are attached in Appendix II.

### **A. Whether Claims 1, 2, 6-11, 13-16, 18-28 and 31-37 are unpatentable under 35 U.S.C. § 103 over Walker '888 in view of bottomdollar.com and Walker '765**

The Examiner has rejected claims 1, 2, 6-11, 13-16, 18-28 and 31-37 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Application Pub. No. 2003/0054888 to Walker *et al.*, (hereinafter "Walker '888"), in view of the website to bottomdollar.com, available at <http://www.web.archive.org/web/19991013040730/http://bottomdollar.com/index.html>, (hereinafter "bottomdollar.com"), and further in view of United States Patent No. 6,364,765 to Walker *et al.* (hereinafter "Walker '765"). The Examiner stated that Walker '888 discloses the claimed invention except for "retrieving at least one product information from at least one database storing independent third-party retail vendor product information." *See* Final Office Action dated April 22, 2009, page 6, first paragraph. The Examiner also stated that Walker '888 does not teach "generating an outcome indicator wherein the outcome indicator is generated independently of the trial outcome . . . displaying the outcome indicator to the user." *See* Final Office Action dated April 22, 2009, page 6, second paragraph – page 7, first paragraph. The Examiner held that "it would have been obvious at to a person of ordinary skill in the art at the time the application was made, to know that Walker '888 would allow customer to play different games of chance, where the probability of winning said game of chance would be independent of a PIN number needed to play said game, as taught by

Walker '765 in order to adjust the probability of winning a product based upon requirements of said game". See Final Office Action dated April 22, 2009, page 7, first paragraph.

**B. Whether Claims 3-5 and 29-30 are unpatentable under 35 U.S.C. § 103 over Walker '888 in view of bottomdollar.com, Walker '765, and Yoseloff**

Claims 3-5 and 29-30 stand rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Walker '888 in view of bottomdollar.com, in further view of Walker '765 and United States Patent No. 6,331,143 to Yoseloff, *et al.* (hereinafter "Yoseloff"). The Examiner stated that "Yoseloff teaches about a system where a player selects a number and the system generates a random number, and a winning outcome is indicated if the user-chosen number matches the system generated number." See Final Office Action dated April 22, 2009, page 18, second paragraph. According to the Examiner, "it would have been obvious to combine Yoseloff with Walker '888 and bottomdollar.com to generate the embodiments claimed in claims 3-5 and 29." *Id.*

**C. Whether Claims 1, 10, 15, 21-22, 33 and 35-37 are unpatentable under 35 U.S.C. §112, 2nd paragraph**

Claims 1, 10, 15, 21-22, 33 and 35-37 stand rejected by the Examiner under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.. The Examiner stated that "the PIN number needed to play the game is not the one that determines if a user would win a game as the trial outcome is independent of the outcome number and PIN." See Final Office Action dated April 22, 2009, pages 3-4.

## **VIII. ARGUMENT**

### **A. Claims 1, 2, 6-11, 13-16, 18-28 and 31-37 Are Patentable Over the Combination of the Prior Art Because the Combination of References Fails to Teach Every Element of the Claims**

The Examiner rejected Claims 1, 2, 6-11, 13-16, 18-28 and 31-37 under 35 U.S.C. § 103(a) as being unpatentable over Walker *et al.*, United States Patent Application Pub. No. 2003/0054888 (hereinafter “Walker ‘888”) in view of a website to bottomdollar.com, available at <http://www.web.archive.org/web/19991013040730/http://bottomdollar.com/index.html>, (hereinafter “bottomdollar.com”), and in further view of United States Patent No. 6,364,765 to Walker *et al.* (hereinafter “Walker ‘765”).

The Examiner presented his arguments rejecting Claim 10 specifically. The Examiner also rejected remaining independent claims 1, 10, 15, 21-22, 33 and 35-37 by applying the same arguments to each of those independent claims. Applicants respectfully assert that Claim 10 is representative of independent Claims 1, 15, 21-22, 33 and 35-37, and that these independent claims stand or fall together. Furthermore, Claims 2-9 and 31-32 depend from independent Claim 1, Claims 11 and 13-14 depend from independent Claim 10, Claims 16 and 18-20 depend from independent Claim 15, Claims 23-30 depend from independent Claim 22, and claim 34 depends from independent Claim 33. By virtue of their dependencies, Claims 2-9, 11, 13-14, 16, 18-20, 23-30, 31-32, and 34 have at least all of the features and limitations as the claims from which they depend.

The Examiner cited Walker ‘888 and bottomdollar.com as showing almost all elements of each of the independent claims, however, the Examiner admitted that neither Walker ‘888 nor bottomdollar.com expressly teaches the Claim 10 element of “generating an outcome indicator



wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial . . . displaying the outcome indicator to the user”. *See* Final Office Action dated April 22, 2009, pages 4-7. In the Examiner’s view, “Walker ‘765 teaches that it is old and well known in the gaming art to play different games of chance in a game machine and obtain different outcomes from said playing.” *See* Final Office Action dated April 22, 2009, page 7. In addition, the Examiner stated that “Walker (765) teaches the need for an [*sic*] user to enter a PIN number to play a game, where said PIN number is generated by the system but said PIN is not needed to determine the probability of winning said game as said probability of winning is calculated independently of said PIN number.” *Id.* (*emphasis added*). As a result, the Examiner stated that “it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Walker ‘888 would allow a customer to play different games of chance, where the probability of winning said game of chance would be independent of a PIN number needed to play said game, as taught by Walker (765)”. *Id.* Accordingly, the Examiner concluded that the combination of references would allow for adjusting the probability of winning a product based upon the requirements of the game. *Id.*

The Supreme Court held that for a claimed invention to be obvious, either alone or in view of a combination of references, an objective analysis for determining obviousness is required. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966); MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2141 (II). This analysis requires the following factual inquiries: 1) determine the scope and content of the prior art; 2) ascertaining the differences between the claimed invention and the prior art; and 3) resolving the level of ordinary skill in the pertinent art. *Id.* at 33.

Applicants respectfully submit that a factual inquiry into the differences between the claimed invention and the prior art suggests that the Examiner has not made a *prima facie* case for obviousness. It is well settled that the claimed invention must be shown in identical detail in the prior art references in order for these references to be considered. *See, e.g., Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); MPEP § 2131. However, the scope of the claimed invention must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005). Further, ascertaining the differences between the claimed invention and the prior art requires interpreting the claim language, and considering both the invention and the prior art as a whole. MPEP at § 2141 (II) (B). Furthermore, the Court of Appeals has reiterated the impermissibility of importing subject matter from the specification to narrow the scope of the claim, *See In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Applicants respectfully assert that the combination of Walker ‘888, in view of bottomdollar.com and Walker ‘765, fails to teach, suggest, or render obvious all of the limitations recited in Claim 10. In particular, none of the cited prior art references, taken singly or in combination, teach, suggest, or obviate, *inter alia*, the claimed elements of “generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome”, “the outcome indicator is representative of a winning trial outcome or a losing trial outcome”, “the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution”, or “the first statistical distribution has a distribution which is different from the second statistical distribution.” Furthermore, none of the cited references teach,

suggest, or render obvious the Claim 10 element of “displaying the outcome indicator to the user”, where the outcome indicator indicates a resulting outcome, but is calculated or determined separately from the trial outcome.

The present principles recited in Claim 10 are applicable to a system for providing a user with an option to win the item sought. The system, *inter alia*, automatically provides the user with an option to play the game to win a selected product or service without the user first making any payment or requesting the option. The system generates a trial outcome of an event trial, and displays the outcome indicator representing either a winning or losing trial outcome. Thus, an outcome indicator is an element that displays either a winning trial outcome or a losing trial outcome. The probability of winning is controlled by an odds management component. The odds management component is configured to determine an overall prize budget, and the users probability of winning a desired product or service is varied by the odds management component and not determined by any PIN number selected by the user. The specification discloses that the calculated probability of winning the trial event is independent of any PIN number selected by or determined for the user. The probability of winning the selected product or service is determined separately from the odds a particular PIN will be randomly selected. For example, in one embodiment, the odds of winning are a function of the ratio of the product or service’s price to the current prize budget. Thus, Claim 10 recites elements that permit a website operator to manage expenses and maintain prize awards within the confines of a budget while providing users with a consistent and interesting user experience.

In contrast, Walker ‘888 discloses a system and method wherein an individual retailer can “increase the excitement associated with the shopping experience” by providing “a system to provide a product which includes reception of a selection of a product from a customer, reception

of a fee to play a game, determination of an outcome of the game, provision of the product to the customer if the outcome is a winning outcome, and credit of a portion of the fee to the customer if the outcome is a losing outcome. As a result, the customer is able to play for products actually desired and a risk of loss is less than that presented by gambling-based systems.” *See* Walker ‘888, page 2, paragraph [0022].

According to Walker ‘888, to increase the excitement associated with shopping, a customer has the option to win a product from a retail store outright for a small percentage of the item’s cost. *See*, Walker ‘888, paragraph [0041]. Alternatively, a customer can apply the cost associated with winning the product as a credit towards the purchase of the desired item. *See* Walker ‘888, paragraph [0096]. The product can be manufactured by a third-party, however, it must be offered for sale at the retail store for it to generate customer excitement, and in turn, increased profits. *See* Walker ‘888, paragraphs [0092, 0096, 0106]. The customer may pay a fee to play the game, *See* Walker ‘888, paragraph [0022], or alternatively, the customer may provide an entry form and submit it to a cashier of the retailer for playing a game to win the product. *See* Walker ‘888, paragraph [0130]. Thus, the system taught Walker ‘888 takes a completely different approach to managing the income-to-expense ratio. Where the Walker ‘888 system gathers income from users on a per-play basis, the present principles are directed to maintaining the income-to-expense ratio by changing the odds of winning based on, for example, a predetermined prize budget.

Furthermore, Walker ‘888 fails to teach, disclose, or render obvious the Claim 10 elements of “automatically transmitting electronic signals representing at least a first option for the user to play a game to win the product without the user first making any payment or requesting the first option, and a second option to purchase the product.” There is no teaching in

Walker '888 of the user playing the game without the user requesting the first option to play the game. According to the present principles, the user has the option of playing the game to win a product without making any payment and without requesting the option to play the game.

Furthermore, Walker '765 also fails to teach, disclose, or render obvious at least the Claim 10 elements of “generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome . . . displaying the outcome indicator to the user.” However, the Examiner stated at page 6 of the office action dated April 22, 2009 that Walker '765 teaches “that it is old and well known in the gaming art to play different games of chance in a game machine and obtain different outcomes from said playing . . . the need for an user to enter a PIN number to play a game, where said PIN number is generated by the system (see col 11, lines 1-15) but said PIN is not needed to determine the probability of winning said game as said probability of winning is calculated independently of said PIN number . . . Walker (888) would allow customer to play different games of chance, where the probability of winning said game of chance would be independent of a PIN number needed to play said game”. *See* Final Office Action dated April 22, 2009, page 6, second paragraph – page 7, first paragraph. Applicants argue that the supporting paragraphs in Walker '765 do not constitute a teaching of this particular claim step.

Walker '765 teaches an amusement device and a method wherein a user may play a secondary game of chance and determining an outcome based on the game requirements of the secondary game, *See* Walker '765 col. 2, lines 25-65. The system requires a user to register and receive a player identifier in order to enable the player to select a secondary game in which to participate, *See* Walker '765, col. 10, lines 57-58. The secondary game may include a game bonus amount that is redeemed by the player upon completing the requirements of the secondary

game. *See* Walker ‘765, col. 14, lines 43-47. The probability of receiving a game bonus amount may be adjusted according to completion times or supplemented to encourage play at off-peak hours, with the probability calculated on receiving an additional monetary payoff as a game bonus amount. However, Walker ‘765 fails to teach, render obvious, or even suggest, the feature of “generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome”, “the outcome indicator is representative of a winning trial outcome or a losing trial outcome”, “the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution”, “the first statistical distribution has a distribution which is different from the second statistical distribution”, and “displaying the outcome indicator to the user”. There is no teaching in Walker ‘765 of generating an outcome indicator having a probability that is independent of the probability of generating a trial outcome. In fact, Walker ‘765 teaches receiving a monetary game bonus amount and does not teach, as the Examiner indicate, a probability of an outcome indicator in the secondary game. Walker ‘765 teaches determining an outcome that is analyzed based on the game requirements. *See* Walker ‘765, Col. 2, lines 55-67. Thus, Walker ‘765 does not teach displaying an outcome indicator representative of a winning or losing trial outcome with a winning trial outcome having a statistical distribution that is difference from the distribution associated with a trial outcome. Similarly, bottomdollar.com fails teach, suggest, or render obvious the above-cited elements of Claim 10.

Thus, the present principles disclose a novel system with an option to win the item sought. This represents a vast improvement over the prior art. Further, the cited references neither teach nor suggest the novel and non-obvious features of this invention.

Applicants, therefore, respectfully request the Board's withdrawal of the Examiner's §103(a) rejection of Claim 1. Furthermore, as Claims 1, 15, 21, 22, 33, 35, 36, and 37 stand or fall with Claim 10, the Applicants respectfully assert that Claims 1, 15, 21, 22, 33, 35, 36, and 37 are patentable over the cited prior art references for at least the same reasons as those discussed above for Claim 10, and respectfully request the Board's withdrawal of the Examiner's §103(a) rejection of Claims 1, 15, 21, 22, 33, 35, 36, and 37.

**B. Claims 3-5 and 29-30 Are Patentable Over the Prior Art Because the Combination of References Fail to Teach Every Element of the Claims**

Claims 3-5 and 29-30 stand rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Walker '888 in view of bottomdollar.com and Walker '765, in further view of Yoseloff *et al.*, United States Patent No. 6,331,143 (hereinafter, "Yoseloff"). In the Office Action dated April 22, 2009, the Examiner asserted that the "Yoseloff teaches about a system where a player selects a number and the system generates a random number, and a winning outcome is indicated if the user-chosen number matches the system generated number" See Office Action dated April 22, 2009, page 18, first paragraph. According to the Examiner, it would have been obvious to combine Yoseloff with Walker'888 and bottomdollar.com to know that "Walker '888 and bottomdollar.com system would allow customers to play a game where the user would choose a number and the system would generate a random number, and where the customer would win a prize when the user-chosen number matches the system generated random number", as claimed in claims 3 and 29. *Id.*

The Applicants assert that Claims 3-5 and 29-30 are patentable over the combination of Walker '888 , bottomdollar.com, Walker '765, and Yoseloff because these four cited prior art

references fail to teach, suggest, or render obvious in any way, all of the limitations of claims 3-5, 29, and 30.

Claims 3 and 29 recite similar elements, and were addressed together by the Examiner with a single argument. Claims 4 and 5 depend from claim 3, and, thus, stand or fall with Claim 3. Claim 3 depends directly from Claim 1, and recites “wherein the display comprises a user-chosen number and a comparison number, such that a winning outcome is indicated by displaying a comparison number that matches the user-chosen number, and a losing outcome is indicated by displaying a comparison number that does not match the user-chosen number.”

Claim 3 recites the feature of indicating a winning or losing outcome by displaying a comparison number, *See, e.g.*, outcome number in the ‘013 application, page 14, l. 13-page 15, l. 3, for comparison to a user’s chosen number. Matching the comparison number to the user’s number indicates a winning outcome “corresponding to the calculated probability of winning,” as recited in claim 1. Applicants particularly draw the Board’s attention to the fact that the comparison number is an element used for display. The specification clearly discloses that “if the pseudo-random event trial returns true, the odds management component 107 causes a winning display to be presented to the user. Otherwise, the odds management component 107 causes a losing display to be displayed to the user.” *See, e.g.*, page 18, ll. 16-21 of United States Patent Application Serial Number 09/759,013 (hereinafter “the ‘013 application”). The probability of winning is preferably independent of the outcome number and PIN”, *See, e.g.*, the ‘013 application, page 18, l. 22-page 19, l. 5, while the winning trial outcome a calculated probability of winning recited in claim 1 is used to actually determine whether a user wins the game being played.



In contrast, as cited by the Examiner, *See* Office Action dated April 22, 2009, Yoseloff teaches a video numbers game, similar to a lottery. *See* Yoseloff, Col. 3, lines 37-57, Col. 4, lines 30-39. The numeric embodiment discussed by Yoseloff covers “a game which is similar to a daily numbers game...a single four digit number is selected by the player and a single four digit number is randomly selected by the microprocessor.” *See*, Yoseloff, Col. 8, lines 35-43.

Under Yoseloff, the odds of a user winning the game are determined by the number of symbols or size of the number range from which the user may select. *See, e.g.*, Yoseloff, Col. 8, lines 37-42. Therefore, a user’s odds of winning are fixed in relation to the preselected number of symbols. Yoseloff reiterates this point by stating “in the most preferred embodiment of the present invention, payout amounts for the basic numbers game are based solely on the probability of occurrence of each winning outcome without consideration for either the amount already wagered in the game or any other occurrence of a similar winning outcome”, *See* Yoseloff, Col. 4, lines 55-60, and “[t]he present invention contemplates using one or more types of symbols to alter the odds and allow for progressive versions of the game. For example, the four ball example of the present invention could be played with two different ball colors in the set. Alternatively, a much larger set of one type of symbols could be used.” *See* Yoseloff, Col. 9, lines 21-26. The player selects either a three or four digit number and wins the game if a single random winning number combination selected by the system matches the player-selected number. *See* Yoseloff, Col. 8, lines 35-50.

Therefore, Yoseloff teaches that the odds of winning are equal to the odds of matching the preselected number of symbols based on statistical analysis. Yoseloff discloses that the odds of winning are determined by changing the number of possible combinations, and that the outcome is random. Yoseloff teaches a system where the budgeted amount paid as winnings

cannot be controlled – a random chance of winning could lead to multiple sequential winners, exhausting a budget with the first user. Furthermore, the number generated by the processor in Yoseloff is a randomly drawn number that is used to match the user's chosen numbers, similar to a lottery. Yoseloff does not disclose any method for controlling a user's odds of winning, a feature that is a clear advantage in the instant claims. The comparison number disclosed in the specification is an element used for communicating a winning result to the user. However, the comparison number is merely used for display, and not for calculating a winning or losing outcome. Therefore, the comparison number is used as a display and does not equate to Yoseloff's numbers that determine the outcome of the lottery game.

Claim 3 recites that the displayed user-selected and comparison numbers *indicate* the event trial outcome. Thus, the trial outcome is separate from the displayed numbers of Claim 3. According to the present principles, the odds of winning a particular prize may be modified or tweaked based on the number of previous wins, the current prize budget, or the like. *See generally*, the '013 application, pages 3-4, 14-18. It would be impossible to apply the fixed probabilities of Yoseloff to Claim 3 without significantly modifying the goals, process, and results of Yoseloff or Claim 3.

It would not be obvious to even a highly skilled practitioner of the art to use the number comparison taught by Yoseloff, singly, or in any combination with Walker '888, bottomdollar.com, and Walker '765, to develop the display or the results recited in Claim 3 as Yoseloff teaches a random number generator using the number to determine a winning number as well as being used as a display for the winning number. Similarly, when taken singly, or in any combination, Walker '888, bottomdollar.com, Walker '765, and Yoseloff fail to anticipate, suggest, or render obvious in any way, all of the elements of Claim 29.

Claims 3-5 depend from independent claim 1, while claims 29 and 30 depend, either directly or indirectly from independent Claim 22. Applicants respectfully reassert that independent Claims 1 and 22 are patentable over the combination of the cited prior art references Walker '888, bottomdollar.com, and Walker '765. Due to their dependencies on Claims 1 and 22, respectively, Claims 3-5 and 29-30 are patentable for at least the same reasons as Claims 1 and 22.

Claims 4 and 5 depend directly from claim 3, and by their dependencies, include all of the features and elements recited in claim 3. Therefore, claims 4 and 5 are patentably distinct and non-obvious over the cited combination of Walker '888, bottomdollar.com, Walker '765 and Yoseloff for at least the same reasons as Claim 3. In light of such non-obviousness, Applicants respectfully solicit the Board's reversal of the Examiner's §103 rejection of Claims 3-5 and 29.

Similarly, claim 30 depends either directly or indirectly from claim 3, and by its dependency, includes all of the features and elements recited in claim 3. Therefore, claim 30 is patentably distinct and non-obvious over the cited combination of Walker '888, bottomdollar.com, Walker '765 and Yoseloff for at least the same reasons as claim 3. In light of such non-obviousness, Applicants respectfully solicit the Board's reversal of the Examiner's §103 rejection of Claim 30.

Claim 30 depends from Claim 29, and recites "The method for providing a user an opportunity to win a product or service of claim 29 wherein the user can increase the probability of winning the product or service by participating in an online survey for an advertising sponsor."

The Examiner asserts that "Walker '888 teaches "wherein the user can increase the probability of winning the product or service by participating in an online survey for an

advertising sponsor.” See Office Action dated April 22, 2009, page 20. The Examiner appears to have equated not paying an explicit fee to play a game, as taught by Walker ‘888, with increasing the probability of winning in exchange for participating in an online survey, as recited in Claim 30. Applicants respectfully dispute the Examiner’s assertion that these two method steps are equivalent.

In fact, Walker ‘888 teaches that a third-party merchant may pay a retailer for any advertisements that are viewed by the user. Benefits accrued to the retailer may be passed along to the user through the retailer giving away a “certain percentage of products.” In some cases, the third-party merchant may pay the retailer for the cost of the product won by the user. Applicants respectfully traverse the Examiners assertions that “giving away a certain percentage of products” equates to an increased probability of the user winning the product or service. In fact, giving away a percentage of products could easily imply that there are more prizes to be won by the user. It also suggests that the user could win multiple prizes without necessarily increasing the odds of winning more games. Therefore, even a practitioner highly skilled in the art would not look to Walker ‘888 to provide a solution for increasing a user’s odds of winning by performing a task because Walker ‘888 teaches that there are a greater number of prizes to be won while the invention as claimed requires that “the user can increase the probability of inning the product or service by participating in an online survey for an advertising sponsor”.

Therefore, Applicants respectfully submit that Walker ‘888, bottomdollar.com, and Walker ‘765, taken singly or in combination, fails to teach, suggest, or obviate , *inter alia*, the claimed elements of Claims 3-5 and 29-30. Applicants respectfully solicit the Board’s reversal of the Examiner’s §103(a) rejection of Claims 3-5 and 29-30.

**C. Claims 1, 10, 15, 21-22, 33, and 35-37 are patentable under 35 U.S.C. §112, second paragraph because the claims particularly point out and distinctly claim the invention**

The Examiner rejected Claims 1, 10, 15, 21-22, 33, and 35-37 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner stated that the aforementioned claims recite “wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution.” *See* Office Action of April 22, 2009, page 3, first paragraph. In the opinion of the Examiner, the claims are rejected under 35 U.S.C. § 112, second paragraph because “the PIN number needed to play the game is not the one that determines if a user would win a game as the trial outcome is independent of the outcome number and PIN.” *See* Office Action of April 22, 2009, pages 3-4. The Examiner failed to particularly identify the reasons for the 35 U.S.C. § 112, second paragraph rejection.

The Examiner rejected independent Claims 1, 10, 15, 21-22, 33, and 35-37 by applying the same arguments to each claim. Applicant respectfully asserts that Claim 1 is representative of independent Claims 10, 15, 21-22, 33, and 35-37, and that these independent claims stand or fall together.

In order for a claimed invention to be rejected under 35 U.S.C. § 112, second paragraph, the essential inquiry is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity, and claim language must be analyzed in light of: 1) the content of the particular application disclosure; 2) the teachings of the prior art; and 3) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2173.02. However, as noted by *In re Ehrreich*, 590 F.2d 902, 200 USPQ 504 (CCPA 1979), agreement, or lack thereof, between the claims and the specification is properly considered only with respect to 35 U.S.C. § 112, first paragraph; it is irrelevant to compliance with the second paragraph of that section. *Id.* at § 2172 (II). Furthermore, “the fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification.” *Id.* at § 2173.01.

As the office action does not specifically identify the reasons for the 35 U.S.C. § 112, second paragraph rejection, Applicants presume that this § 112 rejection is based on an inconsistency between claim language and the specification. Applicants respectfully traverse the 35 U.S.C. § 112, second paragraph rejection and assert that Applicants’ specification is consistent with claim language asserted in Claim 1. As noted therein, Claim 1 requires, *inter alia*, a system for generating a trial outcome of an event trial, and displaying a winning or a losing trial outcome through an outcome indicator. *See, e.g.*, the ‘013 application, page 6, l. 19- page 7, l. 6. The system displays the outcome indicator to the user where “[t]he outcome of the trial determines whether a winning display or a losing display is presented to the user”. *See, e.g.*,

the '013 application, page 18, l. 22-page 19, l. 5. As such, an outcome indicator is an element merely used to display either a winning trial outcome or a losing trial outcome, however, the primary difference being the information that is displayed to the user to signify either a winning or a losing trial outcome. *See, e.g.*, the '013 application, page 14, l. 13-page 15, l. 3, page 18, l. 22-page 19, l. 5. The calculated probability of winning the trial event is independent of any PIN number. *See, e.g.*, the '013 application, page 18, l. 22-page 19, l. 5. Applicants particularly draw the Board's attention to language identified in the specification that states "if the pseudo-random event trial returns true, the odds management component 107 causes a winning display to be presented to the user. Otherwise, the odds management component 107 causes a losing display to be displayed to the user." *See, e.g.*, the '013 application, page 18, ll. 5-21. The probability of winning is preferably independent of the outcome indicator, which includes an outcome number or a user PIN. *See, e.g.*, the '013 application, page 18, l. 22-page 19, l. 5. The winning trial outcome requires a calculated probability of winning, recited in claim 1, which is used to determine whether a user wins the game being played.

Therefore, Applicants respectfully submit that Claims 1, 10, 15, 21-22, 33 and 35-37 are patentable under 35 U.S.C. §112, second paragraph because the claims particularly point out and distinctly claim the invention. Applicants respectfully solicit the Board's reversal of the Examiner's §112, second paragraph rejection of Claims 1, 10, 15, 21-22, 33 and 35-37.

## IX. CONCLUSION

For at least the foregoing reasons, Applicant respectfully solicits the Board's reversal of the Examiner's rejections of Claims 1-11, 13-16, and 18-37.

Respectfully submitted,



Dated: March 16, 2010

---

David M. Hill  
Reg. No. 46,170  
WARD & OLIVO  
380 Madison Avenue  
New York, New York 10017  
(212) 697-6262



## **APPENDIX I: CLAIMS**

1. A method of providing a user with a game of chance, the method comprising the steps of:  
receiving electronic signals from a user system representing search parameters  
descriptive of a product;

retrieving at least one product information from at least one database storing independent  
third-party retail vendor product information;

transmitting electronic signals to the user system representing the retrieved product  
information and associated prices;

automatically providing the user with an option to play a game to win a selected product  
from said product information without the user first making any payment or requesting the  
option;

electronically calculating a dynamic probability of winning the selected product by the  
user based on one or more factors selected from a group consisting of: the cost of the selected  
product in relation to the total cost of all products available, a current prize budget, a ratio of the  
current prize budget to a total amount of funds received, and the user's behavior during a user  
session;

electronically and randomly generating a trial outcome of an event trial, the probability of  
the event trial generating a winning trial outcome corresponding to the calculated probability of  
winning;

generating an outcome indicator, wherein the outcome indicator is generated  
independently of the trial outcome, and wherein the outcome indicator is representative of a  
winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a

winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; and

displaying the outcome indicator to the user; and in response to a winning trial outcome, purchasing the selected product for the user from the independent third-party retail vendor at no cost to the user.

2. The method of claim 1, wherein the probability of winning on successive plays of the game increases with the value derived from the user's interaction with the system.

3. The method of claim 1, wherein the display comprises a user-chosen number and a comparison number, such that a winning outcome is indicated by displaying a comparison number that matches the user-chosen number, and a losing outcome is indicated by displaying a comparison number that does not match the user-chosen number.

4. The method of claim 3, wherein an increased probability of winning on successive plays of the game is indicated by displaying a comparison number having at least one digit matching the corresponding at least one digit of the user-selected number.

5. The method of claim 3, wherein the probability of winning is different than one divided by ten raised to the power of the number of digits in the comparison number.

6. The method of claim 1, comprising providing the user with an opportunity to increase the chances of winning by performing a task for which a third party provides compensation to the provider of the game of chance.

7. The method of claim 1, comprising calculating a probability of winning based on at least a current budget.

8. The method of claim 1, comprising calculating a probability P of winning based on a total number of game players.

9. The method of claim 1, comprising calculating a probability P of winning based on:

$$P = \frac{P_a * P_t * P_m + P_u}{N}$$

where:

$P_a$  is a probability factor that varies with the cost of the selected product in relation to the total cost of all products available;

$P_t$  is a probability factor that varies with a current prize budget;

$P_m$  is a probability factor that varies with a ratio of the current prize budget to a total amount of funds received;

$P_u$  is probability factor that varies with the user's behavior during a user session;

and

$N$  is a number of current users.

10. A method of providing a user with a game of chance, the method comprising:

receiving electronic signals from a user system representing at least one search parameter descriptive of a product;

retrieving at least one product information from at least one database storing independent third-party retail vendor product information;

transmitting electronic signals to the user system representing at least one product, a price of the product and the independent third-party retail vendor of the product;

automatically transmitting electronic signals representing at least a first option for the user to play a game to win the product without the user first making any payment or requesting the first option, and a second option to purchase the product;

if the user chooses to play the game:

electronically calculating a dynamic probability of winning the product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session;

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning;

generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical

distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

in response to a winning trial outcome, purchasing the product for the user from the independent third-party retail vendor at no cost to the user; and

if the user chooses to purchase the product instead of playing the game:

directing the user to a web site which sells the product.

11. The method of claim 10, comprising providing the user with an opportunity to increase the chances of winning on successive plays of the game by performing a task for which a third party provides compensation to the provider of the game of chance.

12. (Canceled)

13. The method of claim 10, comprising calculating a probability P of winning based on a total number of game players.

14. The method of claim 10, comprising calculating a probability P of winning based on:

$$P = \frac{P_a * P_t * P_m}{N} + P_u$$

where:

$P_a$  is a probability factor that varies with the cost of the selected product in relation to the total cost of all products available;

$P_t$  is a probability factor that varies with a current prize budget;

$P_m$  is a probability factor that varies with a ratio of the current prize budget to a total amount of funds received;

$P_u$  is probability factor that varies with the user's behavior during a user session;  
and

$N$  is a number of current users.

15. A method of providing a user with a game of chance, the method comprising:
  - receiving electronic signals from a user system representing at least one search parameter descriptive of a product;
  - retrieving at least one product information from at least one database storing independent third-party retail vendor product information;
  - transmitting electronic signals to the user system representing a plurality of different independent third-party retail vendors and associated prices charged by each of said different independent third-party retail vendors for products identified in response to said at least one search parameter;
  - automatically transmitting electronic signals to the user system representing an option to play a game to win a selected one of said products without the user first making any payment or requesting the option; and
  - if the user chooses to play the game:
    - electronically calculating a dynamic probability of winning said selected one product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current

prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session;

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning;

generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

in response to a winning trial outcome, purchasing said selected one product from a corresponding independent third-party retail vendor for the user at no cost to the user.

16. The method of claim 15, comprising providing the user with an opportunity to increase the chances of winning by performing a task for which a third party provides compensation to the provider of the game of chance.

17. (Canceled)

18. The method of claim 15, comprising calculating a probability P of winning based on a total number of game players.

19. The method of claim 15, comprising calculating a probability P of winning based on:

$$P = \frac{P_a * P_t * P_m}{N} + P_u$$

where:

$P_a$  is a probability factor that varies with the cost of the selected product in relation to the total cost of all products available;

$P_t$  is a probability factor that varies with a current prize budget;

$P_m$  is a probability factor that varies with a ratio of the current prize budget to a total amount of funds received;

$P_u$  is probability factor that varies with the user's behavior during a user session;

and

$N$  is a number of current users.

20. The method of claim 15, wherein the electronic signals representing the associated prices charged by each of said different dealers, represent the prices charged on said each of said different dealers' own web sites.

21. A method of providing a user with a game of chance, the method comprising:

receiving electronic signals from a user system representing at least one search parameter descriptive of a product;

searching for products matching said at least one search parameter;



transmitting electronic signals to the user system representing a plurality of independent third-party retail vendors and associated prices charged by each of said independent third-party retail vendors for products identified in response to said at least one search parameter, each of the products identified being offered for sale on a corresponding web site of each independent third-party retail vendor;

automatically transmitting electronic signals to the user representing an option to play a game to win a selected one of said products without the user first making any payment or requesting the option; and

if the user chooses to play the game:

electronically calculating a dynamic probability of winning said selected one product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session;

electronically generating a trial outcome, the probability of the trial outcome generating a winning trial outcome corresponding to the calculated probability of winning;

generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical

distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

in response to a winning trial outcome, purchasing said selected one product from a corresponding independent third-party retail vendor for the user at no cost to the user.

22. A method for providing a user an opportunity to win a product or service by playing a game of chance without buying the product or service and without paying a fee to play, comprising the steps of:

enabling the user to submit a search query associated with a type of product or service;

conducting a search in a database for an independent third-party retail vendor product or service that satisfies the search query;

automatically presenting a result of the search to the user, including at least one product or service offered for sale by the independent third-party retail vendor retrieved from the database, along with an option to play the game;

enabling the user to select the product or service that he wants to win;

dynamically determining the user's chance of winning the selected product or service based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session;

generating a trial outcome for each play of the game wherein the probability of the trial outcome generating a winning trial outcome corresponds to the user's chance of winning;

generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution; and

displaying the outcome indicator to the user.

23. The method for providing a user an opportunity to win a product or service of claim 22 further comprising the step of purchasing the selected product or service for the user, and at no cost to the user, if the outcome for the play of the game is a win.

24. The method for providing a user an opportunity to win a product or service of claim 22 further comprising the step of enabling the user to increase the chance of winning the selected product or service through repeated plays of the game.

25. The method for providing a user an opportunity to win a product or service of claim 22 wherein the step of determining the user's chance of winning the selected product or service is a function of at least one of a cost of the product or service, a number of other users playing to win the product or service concurrently, a current prize budget and an amount of funds received from an advertising sponsor.

26. The method for providing a user an opportunity to win a product or service of claim 25 wherein the advertising sponsor provides funds for the purchase of the selected product or service to a game provider as a payment for a display of an advertisement to the user during each play of the game.

27. The method for providing a user an opportunity to win a product or service of claim 25 wherein the step of determining the user's chance of winning the selected product or service is a function of the user's behavior during repeated plays of the game.

28. The method for providing a user an opportunity to win a product or service of claim 26 wherein the user's repeated plays of the game generates revenue from the advertising sponsor paid to a game provider which increases the user's chance of winning the selected product or service.

29. The method for providing a user an opportunity to win a product or service of claim 22 wherein the game of chance comprises displaying a number selected by the user along with the number generated to represent the outcome for each play of the game.

30. The method for providing a user an opportunity to win a product or service of claim 29 wherein the user can increase the probability of winning the product or service by participating in an online survey for an advertising sponsor.

31. The method of Claim 1, further comprising collecting a database of independent third party retail vendor product information prior to receiving the search parameters from the user.

32. The method of Claim 1 whereby transmitting electronic signal as representing product info and said automatically providing an option to play is by transmitting a webpage containing at least a link to a webpage of the independent third party retail vendor and a link to initiate playing to win the same product.

33. A method for increasing user traffic to a search engine website, comprising:

receiving a search query from a user system interacting with a search webpage of the website, the search query defining a desired product for the user; and

transmitting a results webpage to the user system, the results webpage including at least one link for redirection to an independent third party vendor website where the user system can interact with at least one webpage to purchase a corresponding product and further including in the same webpage a play link corresponding to the independent third party vendor link for redirection to a webpage which allows the user to play a game of chance to win the product at no cost to the user, the link corresponding to the independent third party website redirection link;

electronically calculating a dynamic probability of winning the corresponding product by the user;

electronically and randomly generating a trial outcome of an event trial, the probability of the event trial generating a winning trial outcome corresponding to a determined probability of winning;

generating an outcome indicator wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

in response to a winning trial outcome, purchasing the selected product for the user from the independent third-party retail vendor at no cost to the user.

34. The method of claim 33, wherein said play link webpage is provided by the search engine website and wherein the search engine website calculates the outcome of the game of chance for a user system selecting to play to win the product and further wherein if the user outcome is favorable the search engine website facilitating the purchase of the product from the independent third party vendor corresponding to the independent third party website redirection link.

35. A method for increasing user traffic to a search website, comprising:

providing a search webpage containing a search interface for a user to submit a search query for a product;

receiving a search query from a user employing said search webpage;

searching independent third party websites by reference to said query;

retrieving product information and corresponding price from the independent third party websites for at least one products satisfying said query;

providing a game of chance in response to a user selection of the link to win the product;

purchasing the product from the independent third party for the user response to a favorable outcome in said game;

transmitting at least one results webpage to the user, the results webpage including at least one link for the product information, a corresponding price, a link to the independent third party website, and a link to win the product;

providing a game of chance in response to a user selection of the link to win the product, wherein the probability of winning the product by the user is dynamically calculated based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session;

generating an outcome indicator, wherein the outcome indicator is generated independently of the probability of winning, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the probability of winning has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

purchasing the product from the independent third party for the user in response to a favorable outcome in said game and providing said product to the user at no cost to the user.

36. A product search website executing on a server storing a plurality of web pages, the website comprising:

a search page for a user submitting a query to the server for at least one product;

a results webpage transmitted to the user, the results page including links to an independent third party website and a link to a play webpage of the website;

a play webpage providing a game of chance for winning the at least one product corresponding to a selected play link from the results webpage, wherein a probability of winning the at least one product by the user is dynamically calculated based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received and the user's behavior during a user session; and

a product win webpage to display an outcome indicator indicating a favorable outcome in said game of chance for the at least one product, wherein the outcome indicator is generated independently of the probability of winning, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a favorable outcome has a distribution associated with a first statistical distribution and the probability of winning has a distribution associated with a second statistical distribution, and further wherein the first statistical distribution has a distribution which is different from the second statistical distribution.

37. A computer-implemented method, comprising the steps of:



receiving a search request for a product, wherein the search request is transmitted from a communication device associated with or used by a user;

processing the search request with a processing device;

generating a message, wherein the message contains information regarding at least one product offered by a retail vendor, product information regarding the at least one product, and at least one price associated with the at least one product;

transmitting the message to the communication device;

automatically providing the user with an option to play a game to win a selected product from the product information regarding the at least one product without the user first making any payment or requesting the option;

electronically calculating a dynamic probability of winning the selected product by the user based on one or more factors selected from a group consisting of: the cost of the selected product in relation to the total cost of all products available, a current prize budget, a ratio of the current prize budget to a total amount of funds received, and the user's behavior during a user session;

electronically and randomly generating a trial outcome for a game of chance, wherein the probability of the game of chance generating a winning trial outcome corresponds to the calculated probability of winning;

generating an outcome indicator, wherein the outcome indicator is generated independently of the trial outcome, and wherein the outcome indicator is representative of a winning trial outcome or a losing trial outcome, and further wherein the outcome indicator for a winning trial outcome has a distribution associated with a first statistical distribution and the trial outcome has a distribution associated with a second statistical distribution, and further wherein

the first statistical distribution has a distribution which is different from the second statistical distribution;

displaying the outcome indicator to the user; and

in response to a winning trial outcome, purchasing the selected product for the user from the independent third-party retail vendor at no cost to the user.

## **APPENDIX II: EVIDENCE**

Exhibit 1: Final Office Action Dated April 22, 2009

Exhibit 2: Amendment and Response to Non-Final Action dated February 5, 2009

Exhibit 3: Non-Final Office Action dated August 5, 2008

### **APPENDIX III: RELATED PROCEEDINGS**

Exhibit 4: Final Office Action dated May 21, 2007

Exhibit 5: Appeal Brief dated March 4, 2008

Exhibit 6: Request for Continued Examination and Amendment, dated May 8, 2008

Exhibit 7: Final Office Action dated June 27, 2005

Exhibit 8: Pre-Appeal Brief Request for Review, dated September 26, 2005

Exhibit 9: Panel Decision from Pre-Appeal Brief Review, dated December 13, 2005